

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

MILFORD-BENNINGTON RAILROAD CO.,
INC.

Plaintiffs,

V.

PAN AM RAILWAYS, INC.,
BOSTON AND MAINE CORPORATION, and
SPRINGFIELD TERMINAL RAILWAY
COMPANY

Defendants.

Docket No. 1:10-cv-00264-PB

DECLARATION OF DAVID A. FINK

I, David A. Fink, do hereby declare and state the following under the pains and penalties of perjury:

1. I am the president of Pan Am Railways, Inc. (“Pan Am”). Pan Am through its subsidiaries employs over 700 people and conducts rail operations in six states. I am ultimately responsible for all of Pan Am’s operations.

2. I was not directly or indirectly involved in the internal investigation conducted by Pan Am's subsidiaries relating to the October 22, 2009 accident involving the plaintiff's railway car (the "Accident").

3. I was not directly or indirectly involved in the hearings conducted by Pan Am Railways, Inc. on November 10, 2009, May 7, 2010, or October 29, 2010 concerning the Accident. I did not attend those hearings. I have no firsthand knowledge of how the hearings were conducted. I was informed of the penalties imposed on Mr. Leishman as the result of the

hearings by Mr. Edwin Motte, the Vice President of Transportation for Pan Am's subsidiaries. Mr. Motte determined the penalties to be imposed and I played no role in this determination.

4. I have received written correspondence from Mr. Leishman regarding proposed settlement terms concerning this lawsuit. I did not respond to this correspondence. I gave this correspondence to our general counsel, Mr. Robert B. Culliford and instructed Mr. Culliford to handle the response. I did not instruct Mr. Culliford as to what the company's response should be to Mr. Leishman's proposals, but rather left that to his discretion.

Signed under the pains and penalties of perjury this 23 day of September, 2011.

/s/ David A. Fink

David A. Fink